



CONSERVATION COMMISSION MEETING MINUTES – November 21, 2016

Present: Scott McIsaac- Chair, Bob Mosher, Paul Hall, Bob Hidell, Adrienne DuBois, Laurie Freeman, John Morrissey, Loni Fournier- Conservation Officer

Absent: None

The meeting was called to order at 7:04 PM.

Approval of Minutes

Motion: Commissioner Mosher motioned to approve the minutes from the November 7, 2016 Commission meeting.

Second: Commissioner Hall **In Favor:** All **Opposed:** None

Certificates of Compliance

400 Lincoln Street – DEP 034-516

An Order of Conditions was issued in February 1998 for road and drainage improvements near the intersection of Lincoln (Route 3A) and Beal streets. The applicant was required to submit monthly reports on water sampling to the Commission for one full year (condition #21). No reports could be found in the project file, however the applicant submitted a summary report (August 1999-July 2000) with their request for a Certificate of Compliance. No as-built plans were provided due to the age of the project and the fact that MassDOT has since redeveloped that section of Route 3A. Staff asked the applicant for confirmation that the deep-sump catch basin was installed. An engineer was unable to find definitive plans for the catch basin, however he assumed that it was installed.

Gene Blanchard, attorney for the applicant, explained that these were off site improvements to the roadway associated with the development of the Lincoln Plaza. The applicant was seeking clear title.

Commissioner Hidell asked whether an engineer submitted a letter regarding the project. The Conservation Officer confirmed that an engineer sent a letter, dated November 3, 2016, confirming that MassDOT's redevelopment was in the same location as the improvements authorized by the Order of Conditions. The Commission agreed that given the age of the filing, lack of as-built plans, and redevelopment of the roadway, the engineer's letter would have to suffice as evidence that the Order was followed.

Commissioner McIsaac asked about the water quality reports. The Conservation Officer stated that there were no reports in the file, however they could have been purged as a space saving measure. She further stated that there was no action required after the results were submitted, so the testing was possibly intended to form a baseline.

Motion: Commissioner Morrissey motioned to issue a Certificate of Compliance for 400 Lincoln Street, DEP 034-516.

Second: Commissioner Hidell **In Favor:** All **Opposed:** None

100 Industrial Park Road – DEP 034-880

An Order of Conditions was issued in August 2006 to perform additional wetlands restoration work in the southeast corner of the property. Staff visited the site on 11/16/16. The restoration area is thriving, albeit with quite a bit of phragmites. The as-built plans adhere to the final approved plans.

Patrick Connolly, from Beals Associates, Inc., was present and stated that the site is continuously improving and all is in order.

Motion: Commissioner Freeman motioned to issue a Certificate of Compliance for 100 Industrial Park Road, DEP 034-880.

Second: Commissioner Mosher

In Favor: All

Opposed: None

3 Sycamore Lane – DEP 034-1038, continued from 11/7/16 (first hearing on 9/26/16). An Order of Conditions was issued in June 2010 for the construction of an addition. A partial Certificate of Compliance was issued in May 2014. The applicants were required to connect the roof drains on the addition to drywells, per condition #28. Staff visited the site on 10/5/16 and noticed that the roof drains were not connected to drywells. The applicant installed a splash block as a potential solution and suggested that a rain barrel might be installed at the same location. The Commission requested additional information as to why drywells were not installed.

Alan Hsu, the homeowner, was present and explained that the drywells were not on the construction plans. Mr. Hsu further stated that no additional downspouts were added as a result of the addition and that no neighbors have complained about runoff since the addition was completed.

The Conservation Officer reviewed older minutes regarding the original project. A neighbor's concerns were mentioned and in addition, an abutter submitted a letter regarding runoff concerns. This provided some context for why the drywells were included in the original Order. A discussion about rain barrels ensued, with the conclusion that rain barrels come with their own set of issues and do not solve the concern here.

Commissioner McIsaac asked what additional square footage of roof was added. The Conservation Officer estimated 300 square feet.

The Commission agreed that the splash guard does not address the potential runoff issue. Commissioner Hidell recommended a rocky swale, approximately 3 feet deep and 3 feet long. The Conservation Officer suggested continuing to the hearing to the next meeting, with the expectation of an update from the applicant as to the installation of a rocky swale. The applicant agreed.

Motion: Commissioner Hidell motioned to continue the Certificate of Compliance hearing for 3 Sycamore Lane, DEP 034-1038 to December 5, 2016.

Second: Commissioner Freeman

In Favor: All

Opposed: None

Requests for Determination of Applicability

19 Fulling Mill Lane

Applicant: Sara and Adam Gordon

Proposed: Removing trees and installing a playset

The applicants are requesting to remove a total of 16 trees. Eight trees (5 oak, 1 beech and 2 white pine) are located in the southwest corner of the property. An arborist has evaluated these trees and determined that they are not in poor health, however their growing conditions (leaning towards sunlight, sandy and/or wet soils, and multiple leaders) may lead to weakening and falling in time. The remaining 8 trees (3 white pine, 3 maple, 1 sassafras and 1 black birch) are located in the southeast corner of the property. The same arborist evaluated these trees and indicated that one of the maple trees has extensive rot. The arborist recommended removing the other trees to allow more sunlight to reach a beech tree in the same area that is not proposed to be removed.

The applicants wish to remove these trees because they feel the trees pose a threat to their home. They also hope to install a playset in the southwest corner of the backyard, near the existing trees, but feel it would be unsafe to have their children play there. The applicants also feel that the additional sunlight in their backyard would support a garden and reduce the tick population. The applicants have proposed native plants and bushes (2:1 ratio) as mitigation, as well as other creative proposals (see attached narrative).

Staff visited the site on 11/16/16. The applicant has a well-manicured lawn and a mulch border between the yard and wooded area (good techniques to reduce the number of ticks that migrate into the yard*). The yard appears to have sufficient sunlight for the proposed location of the garden (sunlight also reduces tick population*).

* Increasing sunlight does show to reduce tick populations. It is recommended to create a clearly defined, manicured lawn with a border of dry wood chips, tree bark, mulch, or gravel between the wooded area and the lawn to reduce the risks of tick migration into the yard. Some additional modifications that can reduce ticks are as follows: prune trees, mow the lawn, and clear leaf litter and brush, especially along edges of the lawn, stonewalls, and driveways. Move play sets away from the woodland edge. Restrict groundcover in areas frequented by family members. For more information, visit:

http://www.ct.gov/caes/lib/caes/documents/publications/fact_sheets/managingticks05.pdf.

The 8 trees in the southeast corner of the lot are located very close to the resource area and very close to the house. Two of the 8 trees are fairly small and two other trees, in addition to the maple identified by the arborist, are in poor health. All of the trees are becoming overgrown with ivy. The 8 trees in the southwestern portion of the property are tall and currently marked with orange tape. Four trees are very close to the resource area and the remaining 4 trees are within the 50 and 100 foot buffer zones. Two trees do appear to be damaged, with limbs broken or twisted near the crown. The remaining 6 trees appear to be in good health, some with a slight, natural lean.

Staff has reservations about removing all 16 trees. Staff supports the removal of the 8 trees in the southeast corner of the lot and the 2 damaged trees (oak and beech) in the southwest portion of the lot. Staff would like to know if pruning is an option for the remaining 6 trees in the southwest corner (oak and pine), in order to increase sunlight and remove any immediate threats to the house and family, instead of removing the trees entirely. Additionally, staff would like to know if an alternate location could be chosen for the playset to further reduce the threat to the family.

Sara Gordon stated that neither the proposed garden nor the playset could be moved due to the limited sunlight that reaches the yard and the slope of the yard. The arborist did not recommend pruning, feeling that 'vista' pruning to allow for more light does not benefit the health of the tree. Ms. Gordon also noted that there had been no tree maintenance on the property in the last 30 years, according to lack of applications to Conservation Office.

The Conservation Officer restated her reservations about removing all of the trees in the southwest corner of the property. She indicated that not all of the trees in question were identified by the arborist as being in poor health and that some of the trees were mature, indicating that the growing conditions were appropriate. Discussion followed between the Commission and the applicants in regards to tree health, the nature of trees, sunlight and shade, pruning, topping, and whether to prune first and see if that could satisfy the applicant's safety and light concerns.

Commissioner McIsaac clarified that what was before the Commission was whether or not the project can proceed as a Negative Determination of Applicability, or whether it requires a Notice of Intent. He acknowledged that homeowners have rights to their property, but because this property is near a resource area, the Commission has a responsibility to control what and how activity occurs in that area.

Commissioner Morrissey asked if any further mitigation could be considered that would accomplish the applicant's goals and satisfy the Conservation Officer. The Conservation Officer explained that removing the trees would not have a negative impact on the resource area, although it would allow more sun to reach the wetlands than the current conditions. She further stated that standard mitigation measures, such as leaving stumps in place and removing tree debris, are included in the conditions for the trees approved for removal, and the applicants have proposed shorter, native, replacement plantings. However, in the past, the Commission has approved removing trees that are a) healthy and impacting a property negatively in some way or b) unhealthy and threatening a property in some way. The trees in question for this project do not meet these criteria.

The Commission supported the Conservation Officer's evaluation and agreed to defer to her. They expressed confidence that the Conservation Officer and the applicants could reach a satisfactory outcome while preserving the integrity of the resource area and upholding the precedents of the Commission.

Motion: Commissioner Freeman motioned to issue a Negative Determination of Applicability for the proposed work at 19 Fulling Mill Lane, as shown on the submitted plans, and adopt the findings of fact a and b, and conditions 1 through 8 of the staff report.

Findings:

- a. The project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not affect the area subject to protection under the Act or the Regulations.

Conditions:

1. Only the trees approved by the Conservation Commission shall be removed.
2. The tree stumps and roots shall remain in place.
3. The trees must be properly disposed of at an off-site location; no chipped or mulched materials shall remain on the property.
4. Any debris that falls into the resource area shall be removed immediately by hand.
5. The existing lawn area shall not be expanded any further into the buffer zone or resource area.
6. The replacement plantings, at a ratio of 2:1, must be native species.
7. The surface of the proposed playset shall be permeable and if a loose material is chosen, such as mulch, it must be contained by a berm to prevent the material from entering the resource area.
8. The Conservation Department shall be notified of any changes in plans prior to proceeding with said changed plans.

Second: Commissioner Hidell

In Favor: All

Opposed: None

7 Winona Way

Applicant: David Grundfast

Proposed: Construction of a deck

In March 2015, the applicant received a Stop Work Order from the Building and Conservation departments for demolishing a single family house, surrounding soil disturbance, and evidence of debris in the wetland area prior to filing for appropriate permits. The applicant filed a Notice of Intent with Conservation and received an Order of Conditions in May 2015 to reconstruct the house within the existing footprint. The final approved plans show a small deck in the front of the house, but a deck was not proposed in the back of the house. When the construction of the house was completed, the applicant filed a request for a Certificate of Compliance, which was granted in October 2015 and recorded in October 2016. On the as-built plan, the constructed dwelling did not have a deck in the front or the back of the house.

In September 2016, the Building Department was notified that a new deck was constructed (without the approval or knowledge of the Building and Conservation departments). This Request for Determination of Applicability is for the construction of that deck, a 16ft x 16ft structure at the back of the house with four footings. The deck is approximately 32ft from the wetland. The foundation of the house that was demolished was approximately 30ft from the wetland. The foundation of the reconstructed house is approximately 43ft from the wetland. Staff does not believe the constructed deck will have an adverse impact on the resource area.

Staff visited the site on 11/16/16 and noticed that there is still some debris in the northwestern corner of the property, near the edge of the wetlands, and would like the applicant to remove that debris as part of the recommended, after-the-fact approval of this project.

The applicant acknowledged that he made an assumption about being able to replace the deck. He applied to the Commission for several other projects, but neglected to apply for the permit to construct the deck. He added that they removed 120ft of metal fencing and 16 tires from the resource area. He agreed to remove the remaining debris that was observed by staff. The Conservation Officer noted that the disturbance was limited to four footings and had the project come to the Commission before it was built, it would have been approved.

Motion: Commissioner Mosher motioned to issue a Negative Determination of Applicability for the constructed deck at 7 Winona Way and adopt the findings of fact a and b, and condition 1 of the staff report.

Findings:

- a. The project meets the requirements of Part 1, Section 7.1 of the Town of Hingham Wetland Regulations governing procedures for a Request for Determination of Applicability.
- b. The work described is within an area subject to protection under the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations, and will not alter or adversely affect the area subject to protection under the Act or the Regulations.

Conditions:

1. Remove all debris from the edge of the resource area.

Second: Commissioner Freeman

In Favor: All

Opposed: None

Commissioner McIsaac read the Public Hearing Notice of Intent.

Notices of Intent

86 Pleasant Street – DEP 034-1274

Applicant: Capell, LLC

Representative: John Cavanaro

Proposed: Replacing an existing corral with a covered riding ring

The applicant requested a continuance to the next Commission meeting, December 19, 2016.

0 Martins Lane – DEP 034-1272, continued from 11/7/2016

Applicant: Robert Murray

Representative: Carmen Hudson

Proposed: Improving the parking area and constructing a visitors' center

Commissioner Hidell recused himself from the hearing.

This hearing is continued from the November 7, 2016 Commission meeting during which the Commission closed the public comment portion of the hearing and asked staff to draft conditions for approving the project. The purpose of this hearing is to review and approve the findings of fact and special conditions for the Order of Conditions, approving the project.

The Commission briefly discussed the fact that while no abutters were present at the meeting, several individuals did submit comments that were distributed to the Commission, primarily via email. Commissioner McIsaac reminded the Commission that when comments are distributed via email, Commissioners should only reply to the Conservation Officer. Replying to the entire Commission is a violation of the Open Meeting Law.

Representative John Cavanaro was present and had no objections to any of the proposed conditions.

Commissioner DuBois asked whether the sea wall on Martin's Lane needed to be addressed. The Conservation Officer stated that the sea wall was Town property and it was up to the Town to improve it, not the Trustees.

Motion: Commissioner Morrissey motioned to issue an Order of Conditions for the proposed work at 0 Martins Lane, as shown on the submitted plans, and adopt the findings of fact a through d and special conditions 1 through 21 of the staff report.

Findings:

- a. The Notice of Intent as filed meets the minimum requirements of the Wetlands Protection Act (M.G.L. c. 131, § 40) and the Town of Hingham Wetland Regulations.
- b. For this specific site, the Notice of Intent is consistent with the Regulations' intent on minimizing the adverse effects of grading and excavating, changing drainage characteristics, constructing buildings, and removing vegetation, as described in Section 3.3, on Resource Areas and their Wetland Values.
- c. The work described is within Resource Areas subject to protection under the Act and the Regulations, and will not alter or have a significant or cumulative adverse effect on the Resource Areas subject to protection.
- d. The applicant is not required to meet Standard 2 of the DEP Stormwater Management Standards due to the fact that the site discharges to a tidal waterbody. (The Commission has granted the applicant a waiver from this requirement.)

Special conditions:

1. The applicant shall notify the Hingham Conservation Commission in writing of the name, address, and telephone number(s) of the project supervisor or contractor who shall be responsible for ensuring compliance with this Order and shall notify the Commission, by telephone or writing, at least 48 hours prior to commencement of work on the site.
2. This document shall be included in all construction contracts and subcontracts dealing with the work and shall supersede all other contract requirements.
3. The project supervisor or contractor in charge of the work shall have a copy of this Order available on the site at all times.
4. Prior to the start of any excavation or construction, revised plans shall be submitted to the Conservation Department for review and approval. The revised plans must include a tracking pad, 50 feet in length, at the main entrance of the site in order to prevent sediment from being deposited onto the public way or into any resource area.
5. Prior to the start of any excavation or construction, there shall be a pre-construction conference on the site between the project supervisor or contractor responsible for the work and an agent of the Commission to ensure that the requirements of this Order are understood.
6. Prior to the start of any excavation or construction, erosion and sediment controls shall be installed, as shown on the final approved plan, and inspected by an agent of the Commission; straw wattles and/or hay bales will not be used as a form of erosion or sediment control.
7. Erosion and sediment controls shall remain in place until all disturbed or exposed areas have been stabilized with a final vegetative cover or the Commission has authorized their removal.
8. Prior to the start of construction on the visitor's center, additional information on the gutters and downspouts shall be submitted to the Conservation Department for review and approval in order to ensure that the design meets Standard 1 of the DEP Stormwater Management Regulations.
9. During all phases of construction, all disturbed or exposed areas shall be brought to a finished grade and either a) loamed and seeded for permanent stabilization, or b) stabilized in another way approved by the Commission.
10. Any debris, which falls into any resource area, shall be removed immediately by hand.
11. Any on site dumpsters shall not be located within 100 feet of any resource area.
12. There shall be no stockpiling of soil or other materials within 100 feet of any resource area.
13. Issuance of these conditions does not in any way imply or certify that the site or downstream areas will not be subject to flooding, storm damage, or any other form of damage due to wetness.
14. No vehicle, or other machinery, refueling, lubrication or maintenance shall take place within 100 feet of any resource area.
15. Before executing any change from the plan of record, the applicant must have the Commission's written approval. Any errors found in the plans or information submitted by the applicant shall be considered as changes. Approval from other Town Agents or Inspectors does not relieve the applicant from obtaining approval from the Commission.

16. There shall be no application of road salt or deicing chemicals onto the driveways, parking areas and walkways because of the importance of the site. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
17. It is the sole responsibility of the owner of record to maintain drainage structures at all times. Drainage structures shall be inspected and maintained as described in the Operation and Maintenance Plan. The property owner is responsible for maintaining records of this maintenance for review by the Commission. This condition shall apply in **perpetuity** and shall not expire with the issuance of a Certificate of Compliance.
18. The applicant shall apply for a Certificate of Compliance as soon as work has been completed and prior to the expiration of this Order. If work cannot be completed prior to the expiration of this Order, the applicant shall contact the Commission in writing to apply for an extension at least thirty days prior to the expiration date.
19. The applicant shall submit an "as built" plan to the Commission upon completion of this project. The plan shall be signed by the professional engineer of record, who shall certify that the work has been done in accordance with the approved plans and this Order. This plan must be submitted prior to the issuance of a Certificate of Compliance by the Commission.
20. Prior to the issuance of a Certificate of Compliance, a revised Operation and Maintenance Plan shall be submitted to the Conservation Department for review and approval. The revised plan must include the manufacturer's maintenance requirements for the visitor's center infiltration system in order to ensure that Standard 9 of the DEP Stormwater Management Regulations is met.
21. Prior to the issuance of a Certificate of Compliance, the mitigation plantings shall survive at least two full growing seasons with a minimum of 75% survival rate.

Second: Commissioner Mosher

In Favor: All

Opposed: None

Other Business

1. **World's End sculpture site** – The Conservation Officer stated that the Department received complaints about the sculpture site related to compacted soil and ponding water. The Conservation Officer contacted the Trustees, who have been responsive. She recommended that it was too soon to issue an Enforcement Order. Discussion followed regarding foot traffic, compaction, and the best solution for the site considering that the sculpture would be removed in October 2017. Commissioner Hidell recommended a raised bed of crushed stone around the site, in order to take the stress off sediments/clay underneath. Wayne Ciullo, from the Trustees, was present and stated that as soon as the Commission agreed on the best solution, he would start working on implementing it.
2. **20 Andrews Isle Road** - Joseph Hannon, from Atlantic Coast Engineering, came before the Commission on behalf of John Stiles at 20 Andrews Isle Road, in order to see if the Commission would be willing to issue a license to install a temporary seasonal float on Town conservation land in order to have safer kayak access to the tidal marsh of the Home Meadows. The Conservation Officer summarized her conversations with Town Counsel, stating that a permanent structure would require an easement, and ultimately a majority vote from the state legislature, whereas a temporary structure would require a revocable license. The Conservation Officer noted that normally licenses are issued for an activity that benefits the maintenance of conservation lands and/or provides a public benefit, whereas this proposal would benefit only the homeowner, with access to the float being through private land. Discussion and questions followed regarding access to the conservation land, with the Commission indicating that it would not be receptive to an application for this proposal. The Commission concurred that to issue a license to a temporary, private structure on conservation land would set a bad precedent.
3. **232 Cushing Street** - Peter Dunlap, the homeowner, explained that his shallow well (20-25 ft. deep) has, after 21 years, run dry. It performed well until 3-4 years ago, but now it does not refresh. He has been adding outside water to the well but, with winter coming, a more permanent solution is needed. Mr. Dunlap explained that he would prefer to use water from his property, but if he is unable to access water or potable water, that he would need to connect to public water. The proposed replacement well (100 ft. deep) would be 30 ft. from the edge of the wetland. The Conservation Officer explained that typically a project this close to the resource area would, at minimum, require an RDA, but this situation has serious time, health and weather pressures. She asked the Commission to consider allowing a permit to drill the well through an Administrative Review application. Large vehicles are unable to get to the area, so a tripod will be used to drill the well.

Motion: Commissioner Freeman motioned to permit the proposed well at 232 Cushing Street through an Administrative Review application.

Second: Commissioner Morrissey **In Favor:** All

Opposed: None

4. **Vice Chair** - With all Commission members present, the Conservation Officer raised the subject of the need for someone to be Vice-chair. No decision was made, but the Commission will continue to consider it.

The meeting adjourned at 9:08 PM.

Submitted,

Sylvia Schuler, Administrative Secretary

Approved on December 5, 2016.